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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

SATISH SHETTY,

Plaintiff and Appellant,

v.

DEUTSCHE BANK
NATIONAL TRUST
COMPANY,

Defendant and
Respondent.

B277924

(Los Angeles County
Super. Ct. No. BC615847)

APPEAL from an order of the Superior Court of
Los Angeles County, Richard Rico, Judge. Reversed.

Paul M. Hittelman for Plaintiff and Appellant.

Wright, Finlay & Zak, Marvin B. Adviento and Jonathan D.
Fink for Defendant and Respondent.

Satish Shetty has a demonstrated practice of acquiring property after foreclosure proceedings have been initiated and then challenging the foreclosures as a self-represented plaintiff based on alleged irregularities in the funding, securitization, assignment and servicing of the loans and deeds of trust. On April 5, 2016 he brought such an action against Deutsche Bank National Trust Company,¹ seeking to quiet title to a property he had purchased three weeks earlier. On August 26, 2016 the trial court declared Shetty a vexatious litigant pursuant to Code of Civil Procedure section 391, subdivision (b)(1),² ordered him to furnish security in the amount of \$9,000 to Deutsche Bank as a condition to proceeding with this litigation (§ 391.3) and prohibited him from filing in propria persona any new litigation in the courts of this state without first obtaining leave of the presiding judge or justice of the court where the litigation was proposed to be filed (§ 391.7). Shetty, having retained counsel for this appeal, argues the trial court's order was not supported by substantial evidence. We reverse.

¹ Deutsche Bank was sued in its capacity as trustee for Indymac IMSC Mortgage Loan Trust 2007-F3, Mortgage Pass-Through Certificates Series 2007-F3. While many documents in the record refer to Deutsche Bank as trustee for Indymac *IMJA* Mortgage Loan Trust, Deutsche Bank has not indicated Shetty named the incorrect entity in the complaint.

² Statutory references are to this code unless otherwise stated.

FACTUAL AND PROCEDURAL BACKGROUND

1. *The Complaint*

In May 2015 the Renaissance at Westlake Homeowners Association purchased a condominium at a trustee's sale after the owner had failed to pay homeowners association dues. In September 2015 Deutsche Bank, through its authorized agents, initiated nonjudicial foreclosure proceedings on the condominium due to the prior owner's default on a home loan secured by a deed of trust recorded in 2007. A notice of default and election to sell was recorded on September 29, 2015. On March 14, 2016 a notice of trustee's sale was issued and recorded indicating a trustee's sale would take place on April 20, 2016.

In March 2016 the Renaissance executed a grant deed transferring the condominium to Shetty for the purchase price of \$4,000. The grant deed was dated March 14, 2016, but the notarizations and attached Residential Purchase Agreement were signed on March 21, 2016. The grant deed was recorded on March 29, 2016.

On April 5, 2016 Shetty sued Deutsche Bank alleging causes of action for quiet title and declaratory relief.³ Shetty alleged he was the owner of the condominium and Deutsche Bank had no legal interest in it. He further alleged the notice of trustee's sale was void.

Deutsche Bank answered and moved for judgment on the pleadings, arguing the Renaissance, and subsequently Shetty, obtained the condominium subject to the deed of trust.

³ The complaint also named American Mortgage Network, Inc. as a defendant; it does not appear from the record American Mortgage has appeared in the case.

2. The Vexatious Litigant Motion

On July 11, 2016, while its motion for judgment on the pleadings was pending, Deutsche Bank moved to declare Shetty a vexatious litigant. Deutsche Bank contended Shetty must be found to be a vexatious litigant pursuant to section 391, subdivision (b)(1) and (2), which defines a vexatious litigant to include a self-represented litigant who has had at least five litigations finally determined adversely to him or her within the past seven years (subd. (b)(1)) or who repeatedly relitigates a claim or issue that has previously been finally determined against the same defendant (subd. (b)(2)). Deutsche Bank requested that Shetty be required to provide security to Deutsche Bank as a condition of proceeding in the litigation and that he be prohibited from filing any new litigation in California without obtaining a prefiling order.

In support of its motion Deutsche Bank submitted evidence of seven prior litigations Shetty had filed or maintained as a self-represented litigant, which Deutsche Bank stated had been finally decided adversely to Shetty.⁴

First, Deutsche Bank submitted a 2013 complaint filed by Shetty, representing himself, in the United States District Court for the Central District of California against Selene Finance LP and 10 additional defendants alleging 10 causes of action,

⁴ Deutsche Bank requested the trial court take judicial notice of documents filed in the seven actions. The trial court did not explicitly rule on the request for judicial notice but relied on the documents in its order. We take judicial notice of the documents submitted to the trial court in support of Deutsche Bank's vexatious litigant motion. (See Evid. Code, §§ 452, subd. (d) [court may take judicial notice of court records], 459, subd. (a)(1).)

including fraud and quiet title, based on the defendants' allegedly improper attempts to foreclose on a property in Canyon Country. As evidence the case had been finally decided against Shetty, Deutsche Bank submitted a 2014 minute order granting defendants' motions to dismiss Shetty's federal law claims with prejudice and declining to exercise jurisdiction over the state law claims.

Second, Deutsche Bank submitted a 2013 complaint filed by Shetty, representing himself, in the United States District Court for the Central District of California against Suntrust Mortgage, Inc. and 11 additional defendants alleging 11 causes of action, including breach of contract and quiet title, based on the defendants' allegedly improper attempts to foreclose on a property in Huntington Beach. As evidence the case had been finally decided against Shetty, Deutsche Bank submitted a 2013 minute order granting defendants' motions to dismiss without leave to amend.

Third, Deutsche Bank submitted a 2013 complaint filed by Shetty, representing himself, in the United States District Court for the Central District of California against Nationstar Mortgage LLC and 10 additional defendants alleging 12 causes of action, including fraudulent misrepresentation and quiet title, based on the defendants' allegedly improper attempts to foreclose on a property in Temecula. As evidence the case had been finally decided against Shetty, Deutsche Bank submitted a 2014 minute order dismissing nine causes of action. However, the order stated three causes of action remained pending.

Fourth, Deutsche Bank submitted a 2013 complaint filed by Shetty in Los Angeles County Superior Court against Goldman Sachs Mortgage Company and six additional defendants alleging

seven causes of action, including unlawful foreclosure and quiet title, based on the defendants' allegedly improper attempts to foreclose on a property in Tarzana. As evidence the case had been finally decided against Shetty, Deutsche Bank submitted an order sustaining the demurrer of two defendants without leave to amend. Shetty was represented by counsel at the time the complaint was filed, but it appears he was self-represented at the time of the order on the demurrer.

Fifth, Deutsche Bank submitted a 2014 complaint filed in Los Angeles County Superior Court against HSBC Bank USA and another defendant alleging four causes of action, including wrongful foreclosure and quiet title, based on the defendants' allegedly improper attempts to foreclose on a property in Los Angeles. The complaint was filed by Tatonka Acquisitions, Inc., while represented by counsel, but it appears Shetty was substituted as plaintiff at some point and was self-represented. As evidence the case had been finally decided against Shetty, Deutsche Bank submitted a 2016 final judgment of dismissal with prejudice that dismissed the complaint in its entirety and entered judgment in favor of the defendants.

Sixth, Deutsche Bank submitted a 2015 complaint filed by Shetty, representing himself, in the Ventura County Superior Court against Western Progressive LLC and 11 additional defendants alleging six causes of action, including slander of title and quiet title, based on the defendants' allegedly improper attempts to foreclose on a property in Simi Valley. As evidence the case had been finally decided against Shetty, Deutsche Bank submitted a 2015 minute order of the United States District Court for the Central District of California entered after the case

had been removed to federal court and granting defendants' motion to dismiss without leave to amend.

Seventh, Deutsche Bank submitted a 2015 complaint filed by Shetty, representing himself, against Veriprise Processing Solutions LLC and eight additional defendants alleging four causes of action, including cancellation of written instruments and quiet title, based on the defendants' allegedly improper attempts to foreclose on a property in Simi Valley. As evidence the case had been finally decided against Shetty, Deutsche Bank submitted a portion of the publicly available case information statement, which showed the entry of a judgment of dismissal with prejudice on November 19, 2015 and the filing of a notice of appeal by Shetty two weeks later. The latest entry on the statement shows the record on appeal was received in the trial court on March 1, 2016.

3. Shetty's Opposition to the Vexatious Litigant Motion

In opposition to Deutsche Bank's motion Shetty acknowledged he had been a litigant in "hundreds of cases" over the last 35 years. He explained he graduated from law school in 1981 and "is qualified to take the State Bar of California Bar Exam and is also an aspiring member of the State Bar of California and will shortly appear for the California Bar Exam to be able to practice law in California." As such, Shetty argued he "is a qualified lawyer but does not practice law." Shetty also argued Deutsche Bank was not a defendant in the action in its individual capacity, therefore, its motion was improper and "coercive."

On the merits of the motion Shetty stated each of the seven cases cited by Deutsche Bank was pending on appeal at the time of the motion and, thus, none was finally decided for

purposes of the vexatious litigant statutes. Shetty did not submit any evidence to support this assertion.

4. The Trial Court's Ruling

On August 26, 2016, after a hearing on the motion, the trial court adopted its tentative ruling finding Shetty to be a vexatious litigant pursuant to section 391, subdivision (b)(1). The court stated, "Upon review of Defendant's judicially noticeable evidence, it appears that Plaintiff has brought 7 wrongful foreclosure actions beginning on 5/13/13. . . . Each time, Plaintiff's lawsuit [has] been dismissed by the relevant court. [¶] In Opposition, Plaintiff argues that the motion is 'coercive' because Plaintiff plans to sit for the bar and that Defendant counsel is 'unauthorized' to represent Defendant. Plaintiff's claims are irrelevant to the issue at hand and unsupported by the evidence. Plaintiff qualifies [as a vexatious litigant] under CCP § 391(b)(1)." The court ordered Shetty to pay \$9,000 to Deutsche Bank as security in the case and ordered he must obtain permission from the presiding judge prior to filing any future lawsuits. The court did not address Shetty's assertion the seven lawsuits identified by Deutsche Bank were then-pending on appeal.

DISCUSSION

1. Governing Law and Standard of Review

"The vexatious litigant statutes (§§ 391-391.7) are designed to curb misuse of the court system by those persistent and obsessive litigants who, repeatedly litigating the same issues through groundless actions, waste the time and resources of the court system and other litigants." (*Shalant v. Girardi* (2011) 51 Cal.4th 1164, 1169.) The statutes provide two complementary

sets of remedies: “In *pending* litigation, a defendant may have the plaintiff declared a vexatious litigant and, if the plaintiff has no reasonable probability of prevailing, ordered to furnish security. If the plaintiff fails to furnish the security, the action will be dismissed. [Citation.] In addition, a potential defendant may prevent the vexatious litigant plaintiff from filing any new litigation in propria persona by obtaining a prefiling order and, if any new litigation is inadvertently permitted to be filed in propria persona without the presiding judge’s [or presiding justice’s] permission, may then obtain its dismissal.” (*Id.* at p. 1171; see *Bravo v. Ismaj* (2002) 99 Cal.App.4th 211, 221 [§ 391.7 “operates beyond the pending case’ and authorizes a court to enter a ‘prefiling order’ that prohibits a vexatious litigant from filing any new litigation in propria persona without first obtaining permission from the presiding judge”].)

Section 391, subdivision (b), identifies four situations in which a litigant may be deemed vexatious, two of which are at issue in this case: Under subdivision (b)(1) a person is a vexatious litigant if “[i]n the immediately preceding seven-year period [he or she] has commenced, prosecuted, or maintained in propria persona at least five litigations other than in small claims court that have been . . . finally determined adversely to the person.” Under subdivision (b)(2) a person is a vexatious litigant if, “[a]fter a litigation has been finally determined against the person, [he or she] repeatedly relitigates or attempts to relitigate, in propria persona, either (i) the validity of the determination against the same defendant or defendants as to whom the litigation was finally determined or (ii) the cause of action, claim, controversy, or any of the issues of fact or law, determined or concluded by final determination against the same defendant or

defendants as to whom the litigation was finally determined.” “Litigation” for purposes of the vexatious litigant statutes is broadly defined to mean “any civil action or proceeding, commenced, maintained or pending in any state or federal court.” (§ 391, subd. (a).)

The trial court’s determination a person is a vexatious litigant is generally reviewed for abuse of discretion. (*Fink v. Shemtov* (2010) 180 Cal.App.4th 1160, 1169; *Holcomb v. U.S. Bank Nat. Assn.* (2005) 129 Cal.App.4th 1494, 1498-1499.) The findings upon which that determination is based will be upheld if supported by substantial evidence. (*Fink*, at p. 1169.)

The meaning of statutory language presents a question of law we review de novo. (*In re Tobacco II Cases* (2009) 46 Cal.4th 298, 311; *People ex rel. Lockyer v. Shamrock Foods Co.* (2000) 24 Cal.4th 415, 432.) As several appellate courts have observed, portions of the vexatious litigant statutes have been “broadly interpreted.” (See, e.g., *Forrest v. Department of Corporations* (2007) 150 Cal.App.4th 183, 195, disapproved in *Shalant v. Girardi*, *supra*, 51 Cal.4th at p. 1172 & fn. 3; *In re Shieh* (1993) 17 Cal.App.4th 1154, 1167.) Yet other decisions have upheld the vexatious litigant statutes against constitutional challenges on the ground they are narrowly drawn and thus do not impermissibly invade the right of access to the courts. (See, e.g., *Kobayashi v. Superior Court* (2009) 175 Cal.App.4th 536, 541; *Luckett v. Panos* (2008) 161 Cal.App.4th 77, 81; *Wolfgang v. Wells Fargo Bank* (1997) 53 Cal.App.4th 43, 55-57, 60.) As the Supreme Court cautioned, courts must observe the limits set by the applicable statutory scheme even if a broader rule would better serve the purposes of the vexatious litigant statutes. (*Shalant*, at p. 1176.)

2. *The Vexatious Litigant Order Is Reviewable*

Deutsche Bank argues Shetty's appeal must be dismissed because an order deciding a vexatious litigant motion is not directly appealable and can be reviewed only in conjunction with an otherwise appealable order or judgment. Deutsche Bank is correct that an interlocutory order by the trial court designating a person to be a vexatious litigant and entering a prefilng order under section 391.7 is not expressly made appealable by section 904.1 or any other statute. However, such an order is immediately reviewable under section 904.1, subdivision (a)(6), as an injunction. (See *Lockett v. Panos*, *supra*, 161 Cal.App.4th at p. 90 ["a *prefiling order* against a vexatious litigant meets the definition of an injunction" and is immediately appealable]; see also *In re Marriage of Rifkin & Carty* (2015) 234 Cal.App.4th 1339, 1347 [same].)

A vexatious litigant finding requiring a prefilng order is also immediately appealable under the collateral order doctrine, which permits immediate appeal of a "collateral order even though other matters in the case remain to be determined,' but [the collateral order doctrine] applies *only* '[w]here the trial court's ruling on a collateral issue "is substantially the same as a final judgment in an independent proceeding" [citation], in that it leaves the court no further action to take on "a matter which . . . is severable from the general subject of the litigation.'"" (*San Joaquin County Dept. of Child Support Services v. Winn* (2008) 163 Cal.App.4th 296, 300; accord, *Lester v. Lennane* (2000) 84 Cal.App.4th 536, 561; *Marsh v. Mountain Zephyr, Inc.* (1996) 43 Cal.App.4th 289, 297-298.) In addition, to be immediately appealable, the order must "direct the payment of money by appellant or the performance of an act by or against him [or

her].” (*Mercury Interactive Corp. v. Klein* (2007) 158 Cal.App.4th 60, 76; accord, *Lester*, at p. 561.) An order finding a person to be a vexatious litigant is a final decision on an ancillary issue that has no bearing on the substantive issues in the case. The order in this case also required Shetty to pay money to Deutsche Bank to proceed in the case and required him to obtain an order before filing any future litigation. Accordingly, the order is immediately reviewable.

3. *The Trial Court’s Findings Are Not Supported by Substantial Evidence*

Shetty argues the trial court erred in finding he was a vexatious litigant pursuant to section 391, subdivision (b)(1), because Deutsche Bank failed to present evidence demonstrating any of the seven litigations cited in the motion had been finally determined against Shetty. While section 391 does not define the phrase “finally determined,” a judgment “is final for all purposes when all avenues for direct review have been exhausted.” (*Childs v. PaineWebber Incorporated* (1994) 29 Cal.App.4th 982, 993; accord, *Fink v. Shemtov*, *supra*, 180 Cal.App.4th at p. 1174; *First Western Development Corp. v. Superior Court* (1989) 212 Cal.App.3d 860, 864.) Accordingly, to support a vexatious litigant motion pursuant to section 391, subdivision (b)(1), the movant must submit evidence the prior litigations have been adjudicated on appeal or that the time to request appellate review has expired. (See *Childs*, at p. 994 [reversing vexatious litigant finding when cases were pending on appeal]; cf. *Shalant v. Girardi*, *supra*, 51 Cal.4th at pp. 1173-1174 [“litigation” as defined in section 391, subdivision (a), cannot include every procedural step taken during an action].)

Deutsche Bank presented no such evidence. As discussed, Deutsche Bank submitted complaints from seven litigations commenced or maintained by Shetty, representing himself, between 2013 and 2015. Deutsche Bank also submitted orders in six cases and the case information statement in the seventh case indicating all or some of the claims against all or some of the defendants had been dismissed. Those documents prove that Shetty brought or maintained seven actions as a self-represented litigant in the preceding five years. The documents also demonstrate that the trial courts in each case dismissed many of the causes of action Shetty had alleged. What the documents do not establish is that any of the rulings in the seven cases had been “finally determined” at the time of the trial court’s ruling. There was no evidence in the record before the trial court of the rulings having been adjudicated on appeal or the time to appeal having expired. In fact, the documents submitted regarding two of the cases indicated they remained pending, either on appeal or as to some defendants, even after the orders of dismissal.⁵ While Shetty did not submit evidence to the trial court demonstrating

⁵ Deutsche Bank did not request the trial court take judicial notice of the dockets in the seven cases it identified in supporting its motion. We have taken judicial notice of the dockets in the seven cases in response to Shetty’s unopposed request. (See Evid. Code, §§ 452, subd. (d), 459.)

Had the court reviewed those docket sheets, it would have learned that, for six of those cases, Deutsche Bank’s assertions were not only inadequately supported, but also were demonstrably false. Those court records indicate that, other than the Nationstar litigation, the appeal of which was dismissed in 2014, all the cases cited by Deutsche Bank were pending on appeal at the time of the trial court’s ruling.

the cases were not finally determined, it was Deutsche Bank's burden to establish this essential fact, not Shetty's burden to refute it. Because Deutsche Bank failed to submit any evidence to support an essential element of its motion, the trial court erred in declaring Shetty a vexatious litigant.

Deutsche Bank does not address this failure of proof in its respondent's brief on appeal, instead arguing the trial court's order should be upheld because Shetty qualifies as a vexatious litigant pursuant to section 391, subdivision (b)(2). Deutsche Bank fails to recognize subdivision (b)(2) also requires "a litigation has been finally determined" against the alleged vexatious litigant. Accordingly, Deutsche Bank failed to carry its burden under this subdivision as well.⁶

⁶ During oral argument Deutsche Bank argued for the first time that the federal cases brought by Shetty were final even if pending on appeal because federal judgments and orders are deemed final unless and until they are reversed on appeal. We recognize that this is the case for purposes of claim and issue preclusion. (See *Levy v. Cohen* (1977) 19 Cal.3d 165, 172 ["[t]he federal rule is that a judgment or order, once rendered, is final for purposes of res judicata until reversed on appeal or modified or set aside in the court of rendition"].) However, Deutsche Bank has not cited any authority, and we are aware of none, that applies this definition of finality to the vexatious litigant statute. To the contrary, courts have held federal judgments and orders are not final for purposes of the vexatious litigant statute until the case has been adjudicated on appeal or the time to appeal has expired. (See *Holcomb v. U.S. Bank Nat. Assn.*, *supra*, 129 Cal.App.4th at p. 1503, fn. 8; *Childs v. PaineWebber Incorporated*, *supra*, 29 Cal.App.4th at p. 993.) The policies underlying a determination of finality for purposes of the vexatious litigant statute are best served by applying the same definition to both state and federal cases. Regardless, even if we

DISPOSITION

The order declaring Shetty to be a vexatious litigant is reversed. Shetty is to recover his costs on appeal.

PERLUSS, P. J.

We concur:

ZELON, J.

FEUER, J.

were to determine the federal cases identified by Deutsche Bank were finally determined for purposes of the vexatious litigant statute, the evidence would still establish only four finally determined cases against Shetty, one short of the statutorily required five.